

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 14-CV-704-JHP-TLW
)	
(1) OSAGE WIND, LLC;)	
(2) ENEL KANSAS, LLC; and)	
(3) ENEL GREEN POWER NORTH)	
AMERICA, INC.,)	
)	
Defendants.)	

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION [Doc. 4]**

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
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Plaintiff,)	
)	
vs.)	Case No. 14-CV-704-JHP-TLW
)	
(1) OSAGE WIND, LLC;)	
(2) ENEL KANSAS, LLC; and)	
(3) ENEL GREEN POWER NORTH)	
AMERICA, INC.,)	
)	
Defendants.)	

DECLARATION OF BILL MOSKALUK

I, Bill Moskaluk, declare under penalty of perjury as follows:

1. My name is Bill Moskaluk. I am over the age of 18 and this declaration is based on my personal knowledge.
2. I have more than 35 years of experience in construction of roads, airports, utilities, and wind farms. Over the last 12 years, I have had substantial experience as a construction manager on wind farm projects throughout the western United States. I am currently employed as a Site Coordinator in the Construction Division of Enel Green Power North America, Inc. ("Enel").
3. I am presently the Site Coordinator for the Osage Wind Farm project, a 150 megawatt wind farm being constructed on leased surface estate lands located in Osage County, Oklahoma. My duties as Site Coordinator include, among other things, the overall management and supervision of construction of the project, including timing and scheduling of work to ensure the project proceeds on schedule and on budget.
4. I am familiar with and, in connection with the preparation of this declaration, have reviewed the business records of both Enel and Osage Wind, LLC associated with the Osage

Wind Project concerning the development and construction of that project. Those records were contemporaneously made by, or with information from, people with knowledge of the information reported and are kept in the course of Enel's and Osage Wind, LLC's regularly conducted business activities. It is the regular practice of both Enel and Osage Wind, LLC to prepare and maintain such records.

5. In 2010, Osage Wind, LLC began to secure leases to approximately 8,400 acres of privately owned fee surface estate lands from the owners of those lands in an area northeast of the Town of Burbank in Osage County, Oklahoma (the "Wind Farm Property").

6. No portion of the Wind Farm Property is held in trust by the United States for the benefit of the Osage Nation.

7. No portion of the surface estate of the Wind Farm Property is held in trust by the United States for the benefit of an enrolled member of the Osage Nation.

8. No portion of the surface estate of the Wind Farm Property is held subject to restriction by the United States against alienation.

9. Once fully constructed, the facilities on the Wind Farm Property will consist of 84 turbines, underground collection lines running between turbines and a substation, one overhead transmission line, two permanent meteorological towers, and access roads. Upon completion, the total surface footprint of the turbines and associated wind farm equipment will be approximately 1.5% of the 8,400 acres.

10. Osage Wind's plans for the Project originally identified a total of 94 wind turbine sites; 84 planned sites and 10 alternate sites. Osage Wind is not using the 10 alternate sites. Plans for the Osage Wind Project are attached to this declaration as **Exhibit A**.

11. Construction of the Osage Wind Project commenced on October 25, 2013. A Notice of Commencement of Construction was mailed to the Pawhuska Osage County Area Planning Commission (Attn: Jake Bruno) on that date. A true and correct copy of the Notice of Commencement of Construction is attached to this declaration as **Exhibit B**.

12. Construction of the Project has been proceeding on the schedule developed in 2013. In October, 2013, clearing and grubbing and initial road construction work began on the Wind Farm Property. That work continued through roughly the end of January, 2014. From roughly late March through June 2014 further road construction and site preparation work was on-going at the Wind Farm Property. In July and August, 2014, the construction site compound, including the on-site office trailers, equipment storage areas, and the site lay down yard, was set up. Excavation work for foundations then began on September 10, 2014. As of the date of this declaration, construction on the project is slightly behind schedule. Osage Wind has not engaged in a "beat the clock" strategy and has not accelerated construction work on the Project, though it has taken reasonable steps to stay on schedule. In fact, contrary to the usual practice for a project at this stage of development, all construction work was shut down for four days for the Thanksgiving weekend.

13. Prior to commencement of construction, Osage Wind instructed its employees and contractors that, in the event artifacts, features, burials, or other cultural materials are encountered during construction, then all construction within 100 feet of any such location must cease so that an assessment of the material that is encountered can be made. If human remains are confirmed to be present, then the construction manager is to notify the Oklahoma State Archeologist and is to comply with the requirements of Oklahoma state law concerning inadvertent discovery of human remains.

14. Osage Wind and its contractors have not encountered any human remains, artifacts, or other cultural materials in connection with construction on the Wind Farm Property.

15. At this stage, the following activities are taking place at the site:

a. *Foundation work.*

- i. Excavations for foundations began in September 2014. The excavations for the turbine foundations are the largest excavations and measure approximately 10 feet deep and between 50 and 60 feet in diameter. The materials excavated include sand, soil of various types, and rock encountered in place. Rock from the excavations comes out in pieces of varying size and shapes. Any rock pieces larger than 3 feet in length are stockpiled next to the hole. That rock remains in place. The rock pieces longer than 3 feet represent roughly 25% of the material dug from each turbine foundation site. Smaller pieces of rock and soil are placed in a separate stockpile.
- ii. After the concrete foundation for a turbine is poured and has cured, the mix of soil and smaller rock are returned to the same hole from which they came and are compacted. Osage Wind's contractor has 4 rock crushers available at the project site. An individual crusher is deployed to a specific excavation site to crush the pieces of rock less than 3 feet long to a size of roughly 3 inches or less. The contractor records the volume of rock crushed and the rock is then stored at the site. After foundations are built and cured, the crushed rock and soil is returned to the hole from which it came. The crusher is then moved to a new excavation location. This is a customary and standard construction practice, including in wind projects, and has been employed around the

country and at other projects in Oklahoma. As of November 28, 2014, the excavation work was 100% completed.

- iii. After the excavation, mud mats, bases, and pedestals are poured using materials brought onto the work site from offsite. As of December 8, 2014, 100% of mud mats had been poured and 100% of bases had been poured.
- iv. Once the foundations are poured and have cured, the crushed rock, sand, and soil from the specific excavation are pushed back and compacted into the excavated site. As of December 8, 2014, the soil, rock and crushed rock had been returned to 90% of the foundations holes.
- v. None of the sand, soil, or rock excavated for any foundation or trench is moved to or used at another location within the Wind Farm Property or outside of that property. No sand, soil, or rock from any excavation is used for any purpose other than to return to the hole from which it came. No excavated sand or rock is used in the mixing or preparing of the concrete for any foundations or other uses.
- vi. No excavated rock or sand is sold or used for commercial purposes.
- vii. All concrete for the construction of the Wind Farm is being supplied from an offsite location by APAC Materials. APAC Materials provides all of the sand, aggregate, and cement from its own commercial stocks. Van Eaton Redi-Mix, Inc. prepares and mixes the concrete in its batch plant which is located outside of the Wind Farm Property at 1951 CR 4030, Burbank, Oklahoma. The mixed, wet concrete is then delivered to the Wind Farm Property by Van Eaton RediMix trucks. There is not now, and there has not been at any point

during construction of the Project, a concrete batch plant or concrete mixer on the Wind Farm Property.

viii. All aggregate is being provided from offsite by third party contractors (Burbank and APAC).

b. *Delivery of components.* General Electric ("GE") is providing the wind turbines and related equipment. Osage Wind has entered into contracts for the purchase and delivery of all turbines for the Project. This delivery is ongoing. Each turbine involves components delivered on eight separate trucks. The components are offloaded on site adjacent to the foundation for that particular turbine. As of December 8, 2014, slightly more than 80% of the necessary components had been delivered.

c. *Installation of towers and turbines.* The process of erecting the towers, completing the rotors, and installing blade sets is underway. This process involves the use of cranes that are assembled on pads on site and then moved as the next turbine is ready for erection. As of December 8, 2014, 17 turbines are in the process of installation and 8 turbines have been fully erected on the Wind Farm Property.

16. Currently there are approximately 200 people on site and involved in the construction of the Osage Wind Project. This includes employees of Osage Wind, Enel, IEARE, Inc. (the general contractor), and several sub-contractors.

17. I anticipate that, if work continues uninterrupted, in January 2015 there will be 300 people on site and involved in the construction of the Osage Wind Project.

18. Once construction is completed, there will be permanent jobs for up to twelve people to oversee and maintain the Osage Wind Project.
19. The general contractor is IEARE, Inc. As part of the construction agreement, IEARE, Inc. agreed to use local subcontractors where possible. The expected revenue to the local contractors is approximately \$2,300,000.00.
20. As of November 21, 2014, the total amount expended on the project, including contracts that have been executed, is \$287,000,000. These expenditures consist of the following:
 - a. Leases of surface estate. The surface estate is being leased from three landowners. Once the Osage Wind Project becomes operational it is expected that the landowners will receive royalties each year that the Project is in operation.
 - b. Surveys, studies, and research.
 - c. Regulatory compliance and legal costs.
 - d. Cost of construction. The original contract price between Osage Wind, LLC, and IEARE, Inc. for the Project construction is approximately \$54,000,000. To date, Osage Wind has incurred approximately \$27,944,342.97 in costs for work that has been completed.
 - e. Cost of wind towers and turbines. The contract price owed to GE for all components of the wind turbines is approximately \$165,500,000.
21. The above expenditures do not include the salaries of employees of Osage Wind, LLC or Enel, or their predecessors, in preparing the Project for construction and eventual operation.
22. In the event that construction is halted at this point there will be a substantial expense


both in terms of the costs of construction and the lost revenue from a delay in the Osage Wind Project becoming operational. Based on my knowledge of the Project and review of the records of Enel and Osage Wind, LLC, I conclude that Osage Wind will incur expected damages as follows:

- a. Delay costs to general contractor of approximately \$300,000 per day in the event of a stoppage.
- b. Costs of mobilization and demobilization. In the event there is any substantial delay, the equipment on site and employees would need to be released or laid off. In that situation, whenever construction resumes there will be a substantial cost associated with mobilization. This type of stoppage was not anticipated when negotiating contracts and my best estimate for the cost would be an additional \$300,000.
- c. Demurrage rates payable to GE because Osage Wind, LLC, will be unable to accept delivery of components that are delivered daily of approximately \$25,200 per day.
- d. Loss of profits due to the delay in completing construction. It is estimated that, once operational, the Osage Wind Project will produce approximately \$1,000,000 in revenue per month.

23. In addition to the specific, known costs, there are additional potential costs relating to a halt in construction. The delay could damage the construction equipment, wind towers, and turbines that are on site or in transit.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 9th day of December, 2014, in Seabrook, Oklahoma.


Bill Moskaluk

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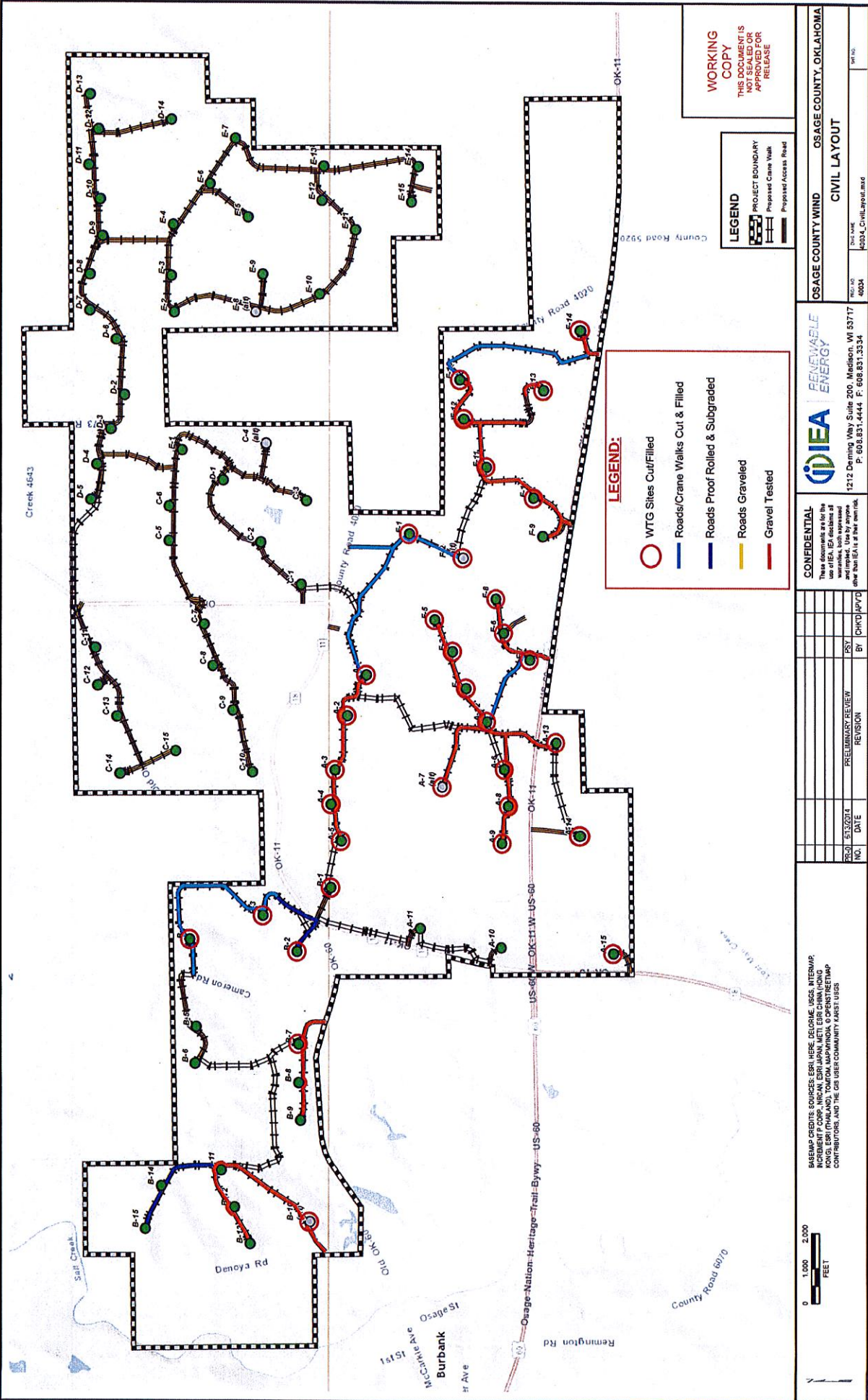


EXHIBIT A



October 25, 2013

Pawhuska Osage County Area Planning Commission
628 Kihekah
Pawhuska, OK 74056
Attn: Jake Bruno, Director, Osage County Planning & Zoning

Dear Mr. Bruno:

This letter is being sent to notify the Pawhuska Osage County Area Planning Commission that, on October 25, 2013, Osage Wind, LLC has commenced on-site construction work pursuant to project number CUP-2012-01. As discussed last week, we are commencing work on the substation and the laydown yard.

As you may already be aware, this commencement of on-site construction follows significant work that has already been performed on the project, consisting of investment in wind turbines and electrical equipment, including the main power transformer which has been delivered to Ponca City, staged for final delivery to the substation site, detailed engineering work, and extensive interconnection and transmission network upgrade work, including work on the Remington Substation, with the total amount spent on such work to date exceeding \$53,000,000.

Osage Wind, LLC looks forward to working closely with the Commission over the upcoming months as we move through successful construction of the Osage Wind energy facility.

Please continue to use me as your primary contact for the wind project. My contact information is (608) 370-2426 or tgreen@windcapitalgroup.com.

Best Regards,

A handwritten signature in blue ink, appearing to read "T. Green", is written over a horizontal line.

Tom Green
Senior Manager, Project Development

RECEIVED
OCT 25 2013
OSAGE CO. PROGRAMS JB